

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

ORIGINAL

75-7671

United States Court of Appeals

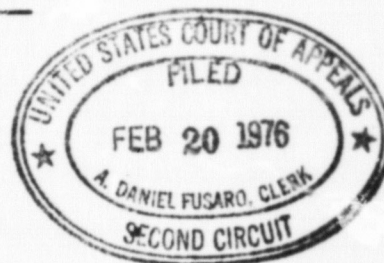
For the Second Circuit.

NECTARIOS KOUPETORIS,
Plaintiff-Appellant.

-against-

KONKAR INTREPID CORP.,
Defendant-Appellee.

PLAINTIFF-APPELLANT'S REPLY BRIEF



LEBOVICI & SAFIR
Attorneys for Plaintiff-Appellant
15 Maiden Lane
New York, N.Y. 10038
(212) BE 3-6165

HERBERT LEBOVICI
Of Counsel

Dick Bailey Printers, Inc., Tel.: (212) 447-5358

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Docket No. 75-7671

PLAINTIFF-APPELLANT'S
REPLY BRIEF

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1.

The respondent further ignores however that by reason of the 8 year time charter under which the vessel served, apart from the carriage of cargo from port to port in United States foreign commerce, the respondent corporation actually did no business outside the United States. Whatever business was done was done here. No business was shown to be done in Greece or elsewhere.

2.

Respondent refers at page 7 of its brief to an alleged "asserted New York mortgage". Appellant admits that an error was made in referring to the mortgagee as the Chase Bank. It was not. The mortgage was payable at the Chase Bank.

The whole matter is a tempest in a semantic teapot, in part provoked by the denial on the witness' part that there was a mortgage. Respondent attempts to capitalize on the slip by arguing that the Chase Bank was in no way concerned.

The fact remains that the charter hire earned by the vessel from payments made by an American controlled firm into an account maintained at the Chase Bank in New York was paying off the mortgage.

It is relevant that the witness TSELENTIS, a resident of Garden City, N.Y. was authorized to sign checks on the account (81a).

3.

On the basis that more members of the crew were Greek than not respondent argues that proof in the case is more readily available in Greece. Such is not the case.

As appears elsewhere, the vessel was under an 8 year charter to American interests touching at United States ports. The seamen on board such a vessel are more readily available

by deposition or as a live witness here than in Greece.

4.

When appellant examined the president of the New York corporation through which the respondent did its business the witness testified that monthly the New York corporation gave a statement of charter hires received and expenses of the vessel paid out by it to the respondent. A copy of these accountings was demanded on the record (90a). Similarly, on this deposition the 8 year charter pursuant to which the vessel was being operated was also demanded on the record (77a).

The claim by respondent that appellant's attorney "was informed on July 28, 1975 that Konkar Intrepid Corp. would not produce the two documents he sought without a Court order" is unpaginated and is categorically denied. No such statement was ever made to appellant's counsel.

No reason for the non-production of these documents was ever given, nor the point ever made that they were not "properly" demanded. They were certainly sufficiently possibly relevant for their being required to be produced. They could well have thrown dispositive or additional light on the "substantiality" of defendant's contacts with the United States.

In Lekkas v. Liberian M/V Caledonia, 443 F.2d 10, approved by this Court in Grammenos v. Lemos, 457 F.2d 1067, at 1069-1070, the Fourth Circuit Court of Appeals stated at page 11:

"When the owner asked the court to decline jurisdiction, it subjected itself, its agents, and those to which it entrusted the vessel to the obligation of furnishing on request all pertinent information for decision of its motion.

"The judgment of the district court is vacated and this action is remanded for completion of discovery on the shipowner's motion to decline jurisdiction. If the defendants do not promptly and forthrightly, . . ."

The same is equally true herein.

5.

In its Point III respondent commits two errors. First it assumes that the Jones Act does not apply. Whether this is or is not so, is one of the very issues of fact in issue here. Appellant just as strongly asserts that the showing of fact made by appellant (main brief, pp. 3-6) is more than sufficient. Even were it not, completion of discovery in the language of Grammenos v. Lemos, supra, could very well "tip the balance".

The second error is to claim that there is no jurisdiction to determine the claim under the Liberian Law, in

the event the connecting factors at trial should not prove sufficiently substantial to warrant application of the Jones Act.

The appellant having made by its complaint a proper Jones Act case, supported (at the very least) by prima facie showing of fact, the Court will still have jurisdiction to determine the case as a Liberian Law case, failing the sufficiency of the case under the Jones Act. The Liberian claim is pendant to the Jones Act claim and appellant is entitled to a jury trial on this issue as well, Moncada v. Lemuria S.S. Corp., 491 F.2d 470, 473.

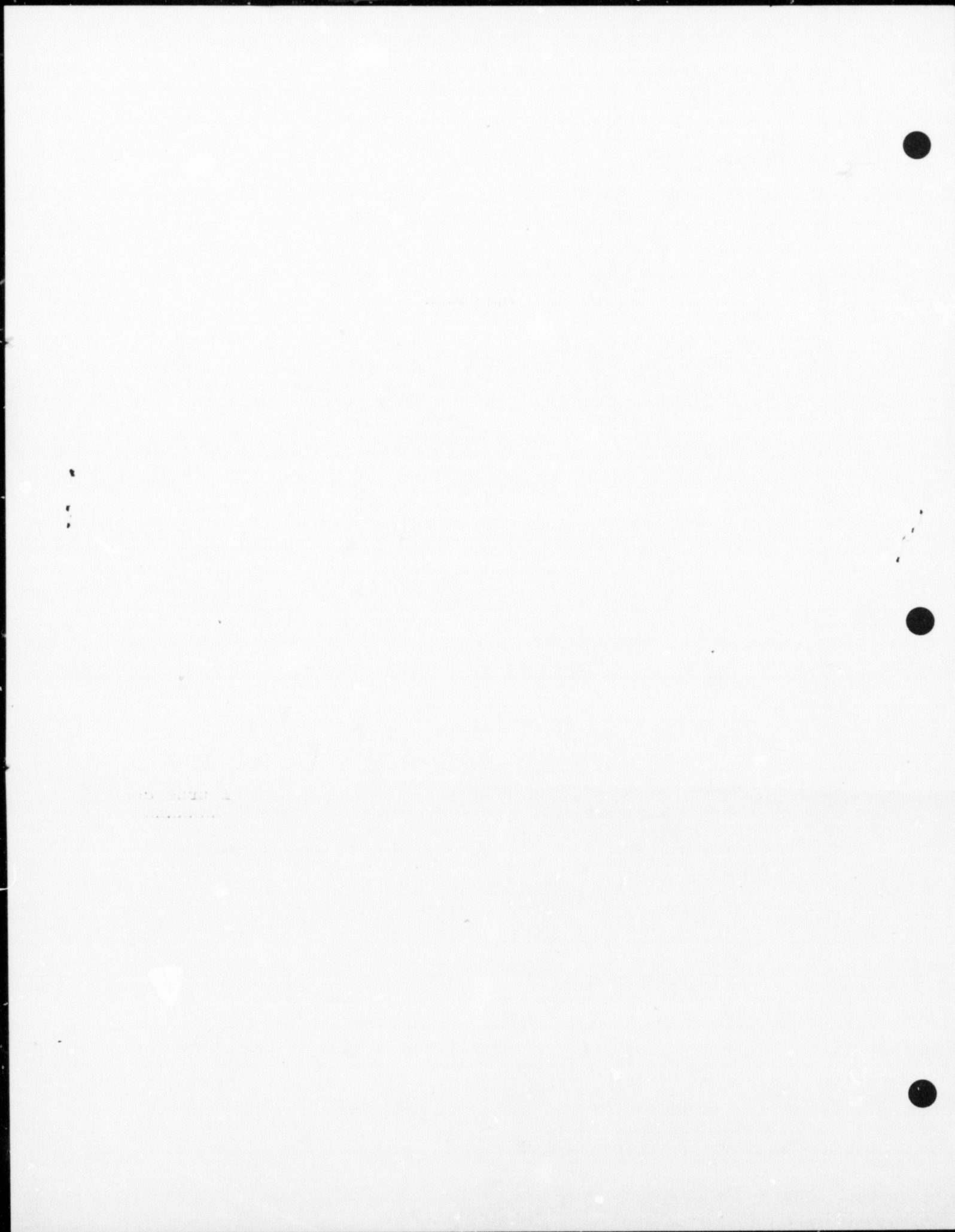
The claim that the appellant seaman has bargained away his right to a determination of his claim under the Liberian Law (respondent's brief, p. 25) is likewise erroneous, Tsaoyssides v. M/V Mar Star, 372 F.Supp. 74, 76.

CONCLUSION

THE JUDGMENT BELOW SHOULD BE REVERSED
AND THE MATTER REMANDED TO THE DISTRICT
COURT FOR FURTHER DISCOVERY AND PROCEEDINGS

LEBOVICI & SAFIR
Attorneys for Plaintiff-Appellant

HERBERT LEBOVICI
Of Counsel



LEBOVICI & SAFIR
Koupetoris

STATE OF NEW YORK)
 : SS.
COUNTY OF NEW YORK)

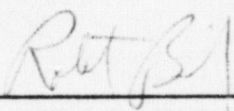
ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 20 day of Feb. 1976 deponent served the within Reply Brief upon:

Kirlin, Campbell & Keating, Esqs.

attorney(s) for
Appellee

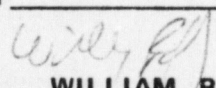
in this action, at
120 Broadway, New York, N.Y.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Robert Bailey

Sworn to before me, this 20
day of Feb., 1976.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976